

IN THE COURT OF COMMON PLEAS  
PORTAGE COUNTY, OHIO

**2024 CV 00920**

TULIPS LLC  
6188 Marteney Ave.  
Kent, OH 44240

CASE NO.

**JUDGE BECKY L. DOHERTY**

JUDGE

Plaintiff,

**COMPLAINT FOR DECLARATORY  
JUDGMENT, BREACH OF  
CONTRACT AND BAD FAITH**

v.

(WITH JURY DEMAND ENDORSED  
HEREON)

AUTO-OWNERS MUTUAL INSURANCE  
COMPANY  
6101 Anacapri Blvd.  
Lansing, MI 48917

Defendant.

---

Plaintiff Tulips LLC ("Tulips" or "Plaintiff") states as follows for its complaint against Defendant Auto-Owners Mutual Insurance Company ("Auto-Owners" or "Defendant").

**PARTIES**

1. Tulips is a single member Ohio Limited Liability Company located in Kent, Ohio.
2. Auto-Owners is a Michigan corporation with its principal place of business in Lansing, Michigan.

**JURISDICTION AND VENUE**

3. This Court has jurisdiction over this action pursuant to Ohio R.C. 2305.01 et seq.
4. Venue in this Court is proper pursuant to Ohio Civ. R. 3(C)(3, 5-7) because Portage County is where the Defendant conducted activity giving rise to this lawsuit, it is the location of

**Exhibit A**

the real property that Defendant insured and which is the subject of Plaintiff's Complaint, and it is the location where all or part of the claim for relief arose.

### **FACTUAL ALLEGATIONS**

#### **The Water Street Building**

5. Tulips owns a commercial building located at 162 N Water Street, Kent, Ohio ("the Water Street Building"). The Water Street Building is a historical mill that Tulips purchased in 2019 for redevelopment purposes as part of its business operations.

6. Tulips engaged in significant work toward redevelopment of the Water Street Building including, but not limited to, working with state and local entities such as Kent State University, several well-known restaurant and other business developers and other potential tenants who had interest in the redevelopment of the Water Street Building for their use, conducting a preliminary structural analysis, a code study, and commissioning a redevelopment master plan by a local architectural firm. Numerous, significant meetings and tours of the Water Street Building were conducted with potential tenants and their consultants for this purpose.

7. In furtherance of these efforts, Tulips did certain work at the Water Street Building at relevant times, including equipment removal, small repairs including on the roof and other similar types of small projects. Upon inquiry, the city advised Tulips that the work Tulips conducted did not require building permits.

8. Tulips also used the Water Street Building since the time of its ownership as a field office for its construction team that was actively engaged in work on a different property owned by Tulips' affiliate located on Franklin Street in Kent.

9. Tulips supplied the Water Street Building with internet service and certain utilities including gas and electric at relevant times.

10. On December 2, 2022, a fire broke out at the Water Street Building causing significant damage and loss exceeding \$1,000,000.

### **The Insurance Policy**

11. Tulips had purchased insurance for the Water Street Building from Auto-Owners including the policy at issue here, policy number 05475533 for the period February 27, 2022 through February 27, 2023 (the “Policy”). A true and accurate copy of the Policy is attached at Exhibit 1.

12. The Policy provides Builders’ Risk-Rehabilitation/Renovation insurance with “Existing Building Limits” in the amount of \$405,000.

13. The Policy provides:

**We cover direct physical loss or damage caused by a covered peril to... ‘existing buildings’ that are part of your ‘rehabilitation or renovation project’.**

14. “Existing building” is defined in the policy in relevant part as:

**[A] structure or building constructed and standing prior to the inception of this policy and that will undergo renovation or rehabilitation as part of your ‘rehabilitation or renovation project.’**

15. “Rehabilitation or renovation project” is defined as:

**a project, described in the Declarations, involving the construction, rehabilitation or renovation of a structure or building.**

16. The Policy contains a “Vacant Building Limitation” which limits coverage for vacant “existing buildings”:

**We only cover a vacant “existing building” for 60 consecutive days from the inception date of this policy unless:**

- a. Building permits have been obtained; and**
- b. Rehabilitation or renovation work has begun on the “existing building.”**

17. The Policy does not define the term “vacant.” “Vacant” is commonly defined as:

“not occupied by an incumbent, possessor or officer”

“being without content or occupant”

“free from activity or work”

“not lived in”

“not put to use”

*Merriam-Webster.com Dictionary*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/vacant> (last visited April 30, 2024).

18. Ample evidence was submitted to Auto-Owners demonstrating that the building was not “vacant” at all, but rather was “put to use” since its purchase and coverage inception.

#### **The Coverage Claim**

19. Tulips timely reported the claim and received a reservation of rights dated **December 12, 2022** in which Auto-Owners advised Tulips that based on a recorded interview taken on the day of the fire, because no active renovation or rehabilitation had commenced and no permits had been obtained for repairs, “the building at 162 N. Water St., Kent, Ohio may be considered vacant” and pursuant to the Vacant Building Limitation the damage from the fire may be excluded.

20. Pursuant to the Policy, Auto-Owners required Tulips to submit a Proof of Loss, which it did despite Auto-Owners’ refusal to extend the deadline, showing in excess of \$1,000,000 in damage.

21. Subsequently, Tulips responded to additional, numerous requests from Auto-Owners for significant information on **March 31, 2023**.

22. On **April 13, 2023**, Auto-Owners “rejected” the Proof of Loss as submitted and requested to conduct an Examination Under Oath (“EUO”) of the insured to address “additional questions that [Auto-Owners] needs answered regarding the property and its use...”

23. The EUO took place on **May 18, 2023**. On **June 15, 2023**, Auto-Owners requested even more documents and information including operating and corporate documents, documents authorizing Tulips representative, Shahab Salehi to act on behalf of Tulips, documents related to an insurance claim for rebar or stored materials, an inventory of personal property in the building, the written contract with Sill Public Adjusting who performed the analysis for the Proof of Loss, leases with contractors, receipts, documents or invoices for any work done from the date of acquisition through fall, 2022 and photos from the acquisition through November 2022.

24. After over six months and significant investment of Tulips’ time and money, on **June 29, 2023** Auto-Owners denied the claim based solely on the “Vacant Building” limitation. Although Auto-Owners admitted there was at least “transient usage” of the building, it denied coverage because (1) no building permits had been obtained, and (2) renovation had not yet commenced. Auto-Owners stated: “The information submitted by the insured and the language of the proof of loss indicates at best transient usage of the insured premises. No building permits were obtained for any work for the loss location and rehabilitation, or renovation work had not begun on the building. Furthermore, there was no certificate of occupancy for the structure, no lease agreement for the transient usage, no water consumption nor sufficient equipment for business operations to exist at the insured premises.”

25. On **June 11, 2024**, Tulips requested that Auto-Owners reverse its decision because it was premised on the “vacant building” limitation which does not apply. The Water Street Building was not “vacant” as plainly defined, but rather was used continuously as demonstrated

through the significant facts and documents already provided to Auto-Owners. Tulips also provided additional requested documentation showing its “use” of the Water Street Building in effort to resolve the claim.

26. On **November 5, 2024**, Auto-Owners again denied Tulips’ claim relying on a near verbatim reasoning based on the “vacant building” limitation set forth in its December 12, 2022 letter. Auto-Owners’ November 5, 2024 denial then adds that despite its admission of some “use” of the building, “[w]e feel this building is deemed to have been vacant at the time of the loss based on our review of the policy language and information submitted. Therefore, there is no coverage for this claim based on the policy language above.”

**COUNT I**  
**(Declaratory Judgment)**

27. Plaintiff incorporates the allegation in paragraphs 1 through 26 above as if fully rewritten herein.

28. Plaintiff brings this Declaratory Judgment Action pursuant to O.R.C. 2721.01 to 2721.15, and Rule 57 of the Ohio Rules of Civil Procedure.

29. An actual and justiciable controversy exists between Plaintiff and Defendant concerning Defendant’s contractual duty to indemnify in full up to policy limits Plaintiff for damage caused by the fire at the Water Street Building.

30. The controversy is ripe for judicial review and is of sufficient immediacy and magnitude to justify the issuance of declaratory relief by this Court.

31. Plaintiff accordingly seeks a declaration from the Court that:

- a. Plaintiff’s claim for loss to the Water Street Building caused by the fire is covered loss;

- b. No exclusion or limitation applies to preclude or limit coverage for Plaintiff's claim;
- c. Plaintiff has satisfied or has been excused from satisfying, or Auto-Owners has waived or is estopped from enforcing, all conditions precedent under the Policy;
- d. Auto-Owners is contractually obligated under the Policy to indemnify Plaintiff for the damage suffered as a result of the fire at the Water Street Building up to Policy limits.

**COUNT II**  
**(Breach of Contract)**

32. Plaintiff incorporates the allegation in paragraphs 1 through 31 above as if fully rewritten herein.

33. Under the contract of insurance described above, Defendant was obligated to pay Plaintiffs up to \$405,000 to cover the damage to the Water Street Building caused by the fire on December 2, 2022.

34. Plaintiff submitted a timely POL establishing damages incurred in excess of \$1,000,000.

35. Defendant breached its contract of insurance with Plaintiffs by failing to timely, fully, and appropriately compensate Plaintiff for its loss.

36. Defendant's breach of contract has resulted in damages to Plaintiffs totaling \$405,000 (policy limits) and forced Plaintiff to incur fees and costs in this action in order to secure the benefits owed to them under the Policy.

**COUNT III**  
**(Breach of Duty of Good Faith and Fair Dealing)**

37. Plaintiff incorporate the allegations in paragraphs 1 through 36 above as if fully rewritten herein.

38. Auto-Owners has a duty to handle, investigate and make timely determinations and payments of Plaintiff's claim in good faith in connection with the Policy issued by it.

39. Auto-Owners has breached its duty of good faith and fair dealing by, among other things, unreasonably and without justification in law or fact: (a) refusing to pay for the damages occurring as a result of the fire; (b) denying the claim based solely on the "vacant building limitation" relying on its own, overly narrow construction of the undefined term "vacant" in order to avoid coverage rather than find coverage; (c) ignoring and/or rejecting facts and documentation showing that the Water Street Building had been continuously put to "use" solely to avoid coverage; (d) unnecessarily requiring Tulips to produce voluminous documentation over an extended six month investigation regarding facts that were wholly irrelevant in light of Auto-Owners' denial based solely on the "vacant building" limitation as enunciated in its December 12, 2022 letter.

40. Auto-Owners has acted toward Plaintiff with conscious disregard of its rights, and with the intent to vex, injure and annoy it so as to constitute oppression, fraud or malice in breach of its duty of good faith and its fiduciary duty to Plaintiff, justifying punitive damages and exemplary damages in an amount sufficient to punish and make an example.

41. As a result, Plaintiff has been prejudiced in the timely and proper repair of the damage to the Water Street Building resulting from the fire, deprived of the benefits to which they were entitled under the Policy, were forced to expend resources responding to Auto-Owners'



demands for significant information that it did not consider and incur fees and costs in this action to enforce the benefits owed to them under the Policy.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for judgment awarding it:

- (1) A declaratory judgment in favor of Plaintiff and against Auto-Owners declaring that:
  - a) Plaintiff's claim is a covered loss;
  - b) No exclusion applies to preclude or limit coverage for Plaintiff's claim;
  - c) Plaintiff has satisfied or has been excused from satisfying, or Auto-Owners has waived or is estopped from enforcing, all conditions precedent under the Policy;
  - d) Auto-Owners is contractually obligated under the Policy to indemnify Plaintiff for the loss up to Policy limits.
- (2) A judicial determination that Auto-Owners has breached the terms of the Policy by failing to indemnify Plaintiff for the loss and awarding Plaintiff compensatory damages in an amount in excess of \$25,000 to be proven at trial;
- (3) A judicial determination that Auto-Owners has breached its duty of good faith and fair dealing and an award of all damages flowing therefrom;
- (4) Consequential and punitive damages as allowed by law;
- (5) Plaintiff's attorneys' fees and costs incurred in connection with this suit;
- (6) Pre-judgment and post-judgment interest as allowed by law; and

(7) Such other and further relief as this Court finds just and proper.

DATED: November 27, 2024

Respectfully submitted,

  
\_\_\_\_\_  
Jason Whitacre (0077330)  
FLYNN, KEITH & FLYNN, LLC  
214 S. Water Street  
P.O. Box 762  
Kent, OH 44240  
(330) 673-0114 (office)  
(330) 617-4278 (fax)  
jwhitacre@flynnkeithlaw.com

  
\_\_\_\_\_  
Jodi D. Spencer (0074139)  
J SPENCER LAW LLC  
12606 Lake Shore Blvd.  
Bratenahl, Ohio 44108  
(216) 284-4080 (office)  
jodi@jspencerlaw.com


*Counsel for Plaintiff*

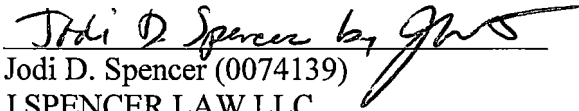
**JURY TRIAL DEMANDED**

Plaintiffs request a trial by jury on all issues so triable.

DATED: November 27, 2024

Respectfully submitted,

  
\_\_\_\_\_  
Jason Whitacre (0077330)  
FLYNN, KEITH & FLYNN, LLC  
214 S. Water Street  
P.O. Box 762  
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(216) 284-4080 (office)  
jodi@jspencerlaw.com

*Counsel for Plaintiff*

03-0346-00  
BRIMFIELD INSURANCE AGENCY INC  
1204 TALLMADGE RD  
KENT OH 44240-6456

## ***Auto-Owners*** **INSURANCE**

**LIFE • HOME • CAR • BUSINESS**

PO Box 30660 • Lansing, MI 48909-8160  
517.323.1200

01-12-2022

Auto-Owners Insurance Company

You can view your policy, pay your bill, or change your paperless options at any time online at [www.auto-owners.com](http://www.auto-owners.com).

### **ADDITIONAL WAYS TO PAY YOUR BILL**

Pay Online  
[www.auto-owners.com](http://www.auto-owners.com)  
Pay My Bill

Pay by Mail  
AUTO-OWNERS INSURANCE  
PO BOX 740312  
CINCINNATI, OH 45274-0312

Pay by Phone  
1-800-288-8740

TULIPS LLC  
PO BOX 955  
KENT OH 44240-0019

Your agency's phone number is 330-673-4919.

RE: Policy 206003-05475533-22

Billing Account 018181680

Thank you for selecting Auto-Owners Insurance Group to serve your insurance needs! Feel free to contact your independent Auto-Owners agent with questions you may have.

Auto-Owners and its affiliate companies offer a full complement of policies, each of which has its own eligibility requirements, coverages and rates. In addition, Auto-Owners also offers many billing options. Please take this opportunity to review your insurance needs with your Auto-Owners agent, and discuss which company, program, and billing option may be most appropriate for you.

Auto-Owners Insurance Company was formed in 1916. Our A++ (Superior) rating by A.M. Best Company signifies that we have the financial strength to provide the insurance protection you need. The Auto-Owners Insurance Group is comprised of six property and casualty companies and a life insurance company.

***Serving Our Policyholders and Agents Since 1916***



## NOTICE OF PRIVACY PRACTICES

### What We Do To Protect Your Privacy

At Auto-Owners Insurance Group\*, we value your business and we want to retain your trust. In the course of providing products and services, we may obtain nonpublic personal information about you. We assure you that such information is used only for the purpose of providing our products and services to you.

### Protecting Confidentiality

Our agents and Company associates may have access to nonpublic personal information only for the purpose of providing our products or services to you. We maintain physical, electronic and procedural safeguards against unauthorized use of your nonpublic personal information.

### Information We Obtain

To assist in underwriting and servicing your policy, we may obtain nonpublic personal information about you. For example, we routinely obtain information through applications, forms related to our products or services, from visiting [www.auto-owners.com](http://www.auto-owners.com), and your transactions with us. We may obtain such information from our affiliates, independent insurance agents, governmental agencies, third parties, or consumer reporting agencies.

The type of information that we collect depends on the product or service requested, but may include your name, address, contact information, social security number, credit history, claims history, information to properly investigate and resolve any claims, or billing information. We may obtain your medical history with your permission. The nature and extent of the information we obtain varies based on the nature of the products and services you receive.

### The Internet and Your Information

If you would like to learn about how we gather and protect your information over the Internet, please see our online privacy statement at [www.auto-owners.com/privacy](http://www.auto-owners.com/privacy).

Generally, Auto-Owners may use cookies, analytics, and other technologies to help us provide users with better service and a more customized web experience. Our business partners may use tracking services, analytics, and other technologies to monitor visits to [www.auto-owners.com](http://www.auto-owners.com). The website may use web beacons in addition to cookies. You may choose to not accept cookies by changing the settings in your web browser.

Information obtained on our websites may include IP address, browser and platform types, domain names, access times, referral data, and your activity while using our site; who should use our web site; the security of information over the Internet; and links and co-branded sites.

### Limited Disclosure

Auto-Owners Insurance Group companies do not disclose any nonpublic personal information about their customers or former customers except as permitted by law. We do not sell your personal information to anyone. We do not offer an opportunity for you to prevent or "opt out of" information sharing since we only share personal information with others as allowed by law.

When sharing information with third parties to help us conduct our business, we require them to protect your personal information. We do not permit them to use or share your personal information for any purpose other than the work they are doing on our behalf or as required by law.

The types of information disclosed may include personal information we collect as necessary to service your policy or account, investigate and pay claims, comply with state and federal regulatory requests or demands, and process other transactions that you request. Third parties that receive disclosures may include your independent agent, regulators, reinsurance companies, fraud prevention agencies, or insurance adjusters.

## **How Long We Retain Your Information**

We generally retain your information as long as reasonably necessary to provide you services or to comply with applicable law and in accordance with our document retention policy. We may retain copies of information about you and any transactions or services you have used for a period of time that is consistent with applicable law, applicable statute of limitations or as we believe is reasonably necessary to comply with applicable law, regulation, legal process or governmental request, to detect or prevent fraud, to collect fees owed, to resolve disputes, to address problems with our services, to assist with investigations, to enforce other applicable agreements or policies or to take any other actions consistent with applicable law.

In some circumstances we may anonymize your personal information (so that it can no longer be associated with you) for research or statistical purposes, in which case we may use this information indefinitely without further notice to you. This allows the specific information collected (name, email, address, phone number, etc.) to become anonymous, but allows Auto-Owners to keep the transaction or engagement data.

## **Changes to the Privacy Policy**

We will provide a notice of our privacy policy as required by law. This policy may change from time to time, but you can always review our current policy by visiting our website at [www.auto-owners.com/privacy](http://www.auto-owners.com/privacy) or by contacting us.

## **Contact Us**

Auto-Owners Insurance Company  
Phone: 844-359-4595 (toll free)  
Email: [privacyrequest@aoins.com](mailto:privacyrequest@aoins.com)

\*Auto-Owners Insurance Group includes, Auto-Owners Insurance Company, Auto-Owners Life Insurance Company, Home-Owners Insurance Company, Owners Insurance Company, Property-Owners Insurance Company and Southern-Owners Insurance Company.

## **NOTIFICATION OF POSSIBLE CHANGES IN COVERAGE FOR TERRORISM**

Dear Policyholder:

The Terrorism Risk Insurance Act (including ensuing Congressional actions pursuant to the Act) will expire on December 31, 2027 unless the Federal government extends the Act. What this means to you is the following:

1. Subject to policy terms and conditions, the enclosed policy will provide insurance coverage for certified acts of terrorism as defined in the Act only until December 31, 2027.
2. A conditional endorsement entitled, Conditional Exclusion Of Terrorism Involving Nuclear, Biological Or Chemical Terrorism (Relating To Disposition Of Federal Terrorism Risk Insurance Act) is enclosed. This conditional endorsement will only apply if the Act is not extended or if the Act is revised to increase statutory deductibles, decrease the federal government's share in potential losses above the statutory deductibles, change the levels, terms or conditions of coverage and we are no longer required to make terrorism coverage available and elect not to do so. It will not apply if the Act is simply extended.
3. The conditional endorsement will provide coverage for an incident of terrorism pursuant to the terms and conditions of the policy only if the incident does not involve nuclear, biological or chemical material.
4. A premium charge for the conditional endorsement will be applied effective January 1, 2028. The premium will be pro rated for the remainder of the policy term and is one-half of the current premium charge appearing in the Declarations for TERRORISM - CERTIFIED ACTS. However, it will only be made if the Terrorism Risk Insurance Act (including ensuing Congressional actions pursuant to the Act) is not extend. Revised Declarations will be mailed to you after January 1, 2028.
5. If the Act is extended without any revision, the enclosed policy will continue to provide coverage for certified acts of terrorism. The conditional endorsement will not be activated and the changes in coverage or premium referenced above will not apply.
6. If the Act is extended with revisions or is replaced, and we are required or elect to continue to offer coverage for certified acts of terrorism, we may amend this policy in accordance with the provisions of the revised Act or its replacement.

This notice is for informational purposes only.

If you have any questions concerning your policy or this notice, please contact your Auto-Owners agency.

# ***Tailored Protection Insurance Policy***

***Auto-Owners (Mutual) Insurance Company***



**POLICY NON-ASSESSABLE**

This policy is non-assessable and the premium stated in the Declarations is the only premium you will be asked to pay.

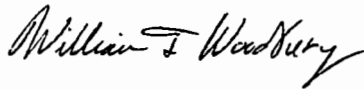
**PARTICIPATING**

You will be entitled to an equitable participation in Company funds in excess of the amount required to pay expenses and all the losses or claims or other policy obligations incurred, together with the reserve and surplus funds required or permitted by law. A distribution will be made only in accordance with the decision of our Board of Directors acting under the insurance laws and under our charter.

**NOTICE OF MEMBERSHIP AND ANNUAL MEETING**

Because we are a mutual company, this policy makes you a member of the Auto-Owners (Mutual) Insurance Company. You are entitled to vote, in person or by proxy, at all meetings. Our annual policyholder's meetings are held at our home office at Lansing, Michigan on the second Monday in May in each year at 10:00 A.M.

In witness whereof, we, the Auto-Owners (Mutual) Insurance Company, have caused this policy to be issued and to be duly signed by our President and Secretary.



Secretary



President



Page 1

Issued 01-12-2022

MUTUAL INSURANCE COMPANY  
6101 ANACAPRI BLVD., LANSING, MI 48917-3999

**TAILORED PROTECTION POLICY DECLARATIONS**

AGENCY BRIMFIELD INSURANCE AGENCY INC  
03-0346-00 MKT TERR 110 330-673-4919

Renewal Effective 02-27-2022

INSURED TULIPS LLC

**POLICY NUMBER 206003-05475533-22**

Company Use 05-60-OH-2002

ADDRESS PO BOX 955

Company  
Bill**Policy Term**

12:01 a.m. to 12:01 a.m.  
02-27-2022 to 02-27-2023

KENT OH 44240-0019

In consideration of payment of the premium shown below, this policy is renewed. Please attach this Declarations and attachments to your policy. If you have any questions, please consult with your agent.

55039 (11-87)

**COMMON POLICY INFORMATION****Business Description:** Builders Risk**Entity:** Limited Liab Corp

THIS POLICY CONSISTS OF THE FOLLOWING COVERAGE PART(S):

COMMERCIAL INLAND MARINE COVERAGE

**PREMIUM**

\$2,632.00

**TOTAL****\$2,632.00****PAID IN FULL DISCOUNT****\$254.00****TOTAL POLICY PREMIUM IF PAID IN FULL****\$2,378.00****THIS PREMIUM MAY BE SUBJECT TO ADJUSTMENT.**

The Paid in Full Discount does not apply to fixed fees, statutory charges or minimum premiums.

Forms that apply to all coverage part(s) shown above (except garage liability, dealer's blanket, commercial automobile, if applicable):

55001 (07-12) 59390 (11-20)

A merit rating plan factor of 0.95 applies.

Countersigned By: COMPANY ISSUED

Auto-Owners Ins. Co.

Issued 01-12-2022

AGENCY BRIMFIELD INSURANCE AGENCY INC  
03-0346-00 MKT TERR 110Company POLICY NUMBER 206003-05475533-22  
Bill 05-60-OH-2002

INSURED TULIPS LLC

Term 02-27-2022 to 02-27-2023

16198 (07-87)

**COMMERCIAL INLAND MARINE COVERAGE****COVERAGES PROVIDED**

Insurance applies to covered property for which a limit of insurance is shown.

Forms that apply to Inland Marine:

59350 (01-15)	16381 (07-08)	16080 (07-13)	16203 (06-88)	16211 (06-88)
59325 (12-19)	16859 (07-19)	59390 (11-20)		

**LOCATION 0001 - BUILDING 0001****Location:** 162 N Water St, Kent, OH 44240-2419**Rating Information for COMMERCIAL INLAND MARINE**

Territory: 670

County: Portage

Construction: Non-Comb

Protection Class: 002

Class Code: 1153

Class Rated

Group I: 0.0520

Group II: 0.3030

\* The deductible (DED) which applies to each coverage indicated below is the same as the deductible which applies to each location and sublocation shown on the Commercial Inland Marine Coverage Declarations, unless otherwise indicated. A single deductible applies per claim. If more than one item is involved in a claim, the single highest applicable deductible amount is used.

\*\* See Form for details

COVERAGE	COINSURANCE	DEDUCTIBLE	LIMIT	RATE	PREMIUM
COMMERCIAL INLAND MARINE BUILDERS' RISK-REHABILITATION/RENOVATION					
Building Materials - Replacement Cost	100%	\$5,000	\$605,000	0.258	\$1,561.00
Existing Building Limit - Stated Value	100%	\$5,000	\$405,000	0.258	\$1,045.00
Catastrophe Limit	100%	\$5,000	\$1,040,000		
Coverage Extensions:					
Debris Removal		*	25% **		Included
Additional Debris Removal		*	\$10,000		Included
Limited Fungi Coverage		*	\$15,000		Included
Supplemental Coverages:					
Expediting Expenses		*	\$10,000		Included
Pollutant Cleanup And Removal		*	\$10,000		Included
Temporary Storage Locations		*	\$10,000		Included
Transit		*	\$10,000		Included
TOTAL FOR THIS COVERAGE:					\$2,606.00

Forms that apply to this location:

16691 (07-14)

Auto-Owners Ins. Co.

Issued 01-12-2022

 AGENCY BRIMFIELD INSURANCE AGENCY INC  
 03-0346-00 MKT TERR 110

 Company POLICY NUMBER 206003-05475533-22  
 Bill 05-60-OH-2002

INSURED TULIPS LLC

Term 02-27-2022 to 02-27-2023

COMMERCIAL INLAND MARINE COVERAGE - LOCATION 0001 SUMMARY	PREMIUM
TERRORISM - CERTIFIED ACTS SEE FORM: 59350, 16381, 59390	\$26.00
LOCATION 0001	\$2,632.00

A single deductible applies per claim. If more than one item is involved in a claim, the single highest applicable deductible amount is used.

	PREMIUM
BUILDERS' RISK SUBTOTAL	\$2,606.00
BUILDERS' RISK BALANCE TO MINIMUM	\$0.00

## **OHIO AMENDATORY ENDORSEMENT INLAND MARINE TPP COVERAGE PART**

We agree:

Under Common Policy Conditions, Cancellation, the following is added:

If the policy has been in effect for 90 days we will cancel only for any of the following reasons:

1. Nonpayment of premium;
2. Discovery of fraud or material misrepresentation in the procurement of the insurance or with respect to any claims submitted thereunder;
3. Discovery of a moral hazard or willful or reckless acts or omissions by you that increase any hazard insured against;
4. The occurrence of a change in the individual risk which substantially increases any hazard insured against after insurance coverage has been issued or renewed, except to the extent that we reasonably should have foreseen the change or contemplated the risk in writing the contract;
5. Loss of applicable reinsurance or a substantial decrease in applicable reinsurance, if the superintendent has determined that reasonable efforts have been made to prevent the loss of, or substantial decrease in, the applicable reinsurance, or to obtain replacement coverage;
6. Failure by you to correct material violations of safety codes or to comply with reasonable written loss control recommendations; or
7. A determination by the superintendent of insurance that the continuation of the policy would create a condition that would be hazardous to the policyholders or the public.

A written notice will be mailed or delivered to you at your last known address no less than:

1. 10 days prior to the effective date of cancellation for nonpayment of premium; or
2. 30 days prior to the effective date of cancellation for all other permissible reasons.

All other terms and conditions of the policy apply.

16859 (7-19)

## ACTUAL CASH VALUE AND DEPRECIATION

Commercial Inland Marine

It is agreed:

Wherever it appears in this policy and any endorsement attached to this policy:

1. Actual cash value means the cost to repair or replace lost or damaged property with property of similar quality and features reduced by the amount of depreciation applicable to the lost or damaged property immediately prior to the loss.
2. Depreciation means a decrease in value because of age, wear, obsolescence or market value and includes:
  - a. The cost of materials, labor and services;

- b. Any applicable taxes; and

- c. Profit and overhead necessary to repair, replace or rebuild lost or damaged property.

The meaning of actual cash value and depreciation in this endorsement supersedes any provision in this policy and any endorsement attached to this policy to the contrary.

All other policy terms and conditions apply.

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Page 1 of 1



## COMMERCIAL INLAND MARINE CONDITIONS

### INSURING AGREEMENT

We agree to provide insurance subject to all the terms of this coverage part. In return, you must pay the premium and comply with all the terms of this policy or coverage part. This insurance applies to loss which occurs during the policy term shown in the Declarations. The coverages provided, the limits of our liability and the premiums are also shown in the Declarations.

### DEFINITIONS

To understand this coverage part, you must understand what we mean when we use these words:

1. You and your mean the insured named in the Declarations.
2. We, us and our mean the Company providing this insurance.

### WHAT TO DO IN CASE OF LOSS

1. **NOTICE** In case of a loss, you must:
  - a. Give us or our agent prompt notice including a description of the property involved (we may request written notice); and
  - b. Give notice to the police when the act that causes the loss is a crime.
2. **YOU MUST PROTECT PROPERTY** You must take all reasonable steps to protect covered property at and after an insured loss to avoid further loss.
  - a. **Payment Of Reasonable Costs** We do pay the reasonable costs incurred by you for necessary repairs or emergency measures performed solely to protect covered property from further damage by a peril insured against if a peril insured against has already caused a loss to covered property. You must keep an accurate record of such costs. Our payment of reasonable costs does not increase the limit of insurance provided for covered property.
  - b. **We Do Not Pay** We do not pay for such repairs or emergency measures performed on property that has not been damaged by a peril insured against.
3. **DAMAGED PROPERTY**
  - a. You must exhibit the damaged and undamaged property as often as we reasonably request and allow us to inspect or take samples of the property.
  - b. Make a list of all damaged and destroyed property, showing in detail quantities, costs, actual cash value and amount of loss claimed.

4. **PROOF OF LOSS** You must send us, within 60 days after our request, a signed, sworn proof of loss. This must include the following information:
  - a. The time, place and circumstances of the loss;
  - b. Other policies of insurance that may cover the loss;
  - c. Your interest and the interests of all others in the property involved, including all mortgages and liens;
  - d. Changes in title of the covered property during the policy period; and
  - e. Estimates, specifications, inventories and other reasonable information that we may require to settle the loss.
5. **EXAMINATION** You must submit to examination under oath in matters connected with the loss as often as we reasonably request and give us sworn statements of the answers. If more than one person is examined, we have the right to examine and receive statements separately and not in the presence of others.
6. **RECORDS**
  - a. You must produce records, including tax returns and bank microfilms of all canceled checks relating to value, loss and expense and permit copies and extracts to be made of them as often as we reasonably request.
  - b. Produce for examination, with permission to copy, all books of account, bills, invoices, receipts and other vouchers as we may reasonably require.
7. **VOLUNTEER PAYMENTS** You must not, except at your own expense, voluntarily make any payments, assume any obligations, pay or offer any rewards, or incur any other expenses except as respects protecting property from further damage.

### SPECIAL CONDITIONS

The following conditions apply unless otherwise stated in a specific coverage form attached to this Commercial Inland Marine policy or this Commercial Inland Marine coverage part.

**ABANDONMENT** You may not abandon the property to us without our written consent.

### APPRAISAL

If you and we do not agree on the amount of the loss or the value of covered property, either party may demand that these amounts be determined by appraisal.

If either makes a written demand for appraisal, each will select a competent, independent appraiser and notify the other of the appraiser's identity within 20 days of receipt of the written demand. The two appraisers will then select a competent, impartial umpire. If the two appraisers are unable to agree upon an umpire within 15 days, you or we can ask a judge of a court of record in the state where the property is located to select an umpire.

The appraisers will then determine and state separately the amount of each loss.

The appraisers will also determine the value of covered property items at the time of the loss, if requested.

If the appraisers submit a written report of any agreement to us, the amount agreed upon will be the amount of the loss. If the appraisers fail to agree within a reasonable time, they will submit only their differences to the umpire. Written agreement so itemized and signed by any two of these three, sets the amount of the loss. Each appraiser will be paid by the party selecting that appraiser. Other expenses of the appraisal and the compensation of the umpire will be paid equally by you and us.

**ASSIGNMENT** This provision applies only if the named insured is an individual.

**a. Your Death** - On your death, we cover the following as an insured:

- (1) The person who has custody of your property until a legal representative is qualified and appointed; or
- (2) Your legal representative.

This person or organization is an insured only with respect to property covered by this coverage.

**b. Policy Term Is Not Extended** This coverage does not extend past the policy term shown in the Declarations.

#### **CONCEALMENT, MISREPRESENTATION OR FRAUD**

This coverage is void as to you and any other insured if, before or after a loss:

- a.** You or any other insured have willfully concealed or misrepresented:
  - (1) A material fact or circumstance that relates to this insurance or the subject thereof; or
  - (2) Your interest herein.
- b.** There has been fraud or false swearing by you or any other insured with regard to a matter that relates to this insurance or the subject thereof.

**COOPERATION** You must cooperate with us in performing all acts required by this policy.

**DEDUCTIBLE** We pay only that part of your loss over the deductible amount shown in the Declarations in any one occurrence.

**INSURABLE INTEREST** We do not cover more than your insurable interest in any property.

**LOSS CLAUSE** Except as shown under **Limited Fungi Coverage**, if provided, the amount of insurance under this policy will not be reduced except for total loss of a scheduled item. Any unearned premium that applies to such item will be refunded.

**NO BENEFIT TO BAILEE** Insurance under this coverage will not directly or indirectly benefit anyone having custody of your property.

#### **OTHER INSURANCE**

**a. Proportional Share** You may have another policy subject to the same terms as this policy. If you do, we will pay your share of the covered loss. Our share is the proportion that the applicable limit under this policy bears to the limit of all policies covering on the same basis.

**b. Excess Amount** If there is another policy covering the same loss, other than that described above, we pay only for the amount of covered loss in excess of the amount due from that other policy, whether you can collect on it or not. However, we do not pay more than the applicable limit.

#### **OUR PAYMENT OF LOSS**

**a. Adjustment And Payment Of Loss** We adjust all losses with you. Payment will be made to you unless another loss payee is named in the policy.

**b. Conditions For Payment Of Loss** An insured loss will be payable 30 days after:

- (1) A satisfactory proof of loss is received; and
- (2) The amount of the loss has been established either by written agreement with you or the filing of an appraisal award with us.

**OUR RIGHT TO RECOVER PAYMENT** If we pay for a loss, we may require you to assign to us your right of recovery against others. You must do all that is necessary to secure our rights. We do not pay for a loss if you impair this right to recover. You may waive your right to recover from others in writing before a loss occurs.

**PAIR OR SET** The value of a lost or damaged article that is part of a pair or set is based on a reasonable proportion of the value of the entire pair or set. The loss is not considered a total loss of the pair or set.

**PARTS** The value of a lost or damaged part of an item that consists of several parts when it is complete is based on the value of only the lost or damaged part or the cost to repair or replace it.

**POLICY TERM** We pay for a covered loss that occurs during the policy term.

**RECOVERIES** If we pay you for the loss and lost or damaged property is recovered, or payment is made by those responsible for the loss, the following provisions apply:

- a.** You must notify us promptly if you recover property or receive payment;
- b.** We must notify you promptly if we recover property or receive payment;



- c. Any recovery expenses incurred by either are reimbursed first;
- d. You may keep the recovered property but you must refund to us the amount of the claim paid or any lesser amount to which we agree; and
- e. If the claim paid is less than the agreed loss because of a deductible or other limiting terms of this policy, any recovery will be prorated between you and us based on our respective interest in the loss.

**RIGHT TO ADJUST LOSS WITH OWNER**

- a. **Adjustment And Payment Of Loss To Property Of Others** Losses to property of others may be adjusted with and paid to:

- (1) You on behalf of the owner; or
- (2) The owner.

- b. **We Do Not Have To Pay You If We Pay The Owner** If we pay the owner, we do not have to pay you. We may also choose to defend any suits brought by the owners at our expense.

**SUIT AGAINST US** No one may bring a legal action against us under this coverage unless:

- a. All of the terms of this coverage have been complied with; and
- b. The suit has been brought within two years after you first have knowledge of the loss.

If any applicable law makes this limitation invalid, then suit must begin within the shortest period permitted by law.

**VALUATION** We will not pay more than the least of:

- a. The actual cash value of the damaged property at the time any loss or damage occurs. Actual cash value may include a deduction for depreciation;
- b. The cost to repair or replace the damaged property with like kind or quality; or
- c. The amount of insurance stated for the class of property shown in the Declarations.

**WHEN TWO OR MORE COVERAGES APPLY**

If more than one coverage of this policy insures the same loss, we pay no more than the actual claim, loss or damage sustained.

## COMMON POLICY CONDITIONS (INLAND MARINE)

The following conditions apply to the INLAND MARINE COVERAGE PART:

### 1. CANCELLATION

- a. You may cancel this policy by mailing or delivering to us advance written notice of cancellation.
- b. We may cancel this policy by mailing or delivering to you written notice of cancellation at least:
  - 1) 10 days before the effective date of cancellation, if we cancel for nonpayment of premium; or
  - 2) 30 days before the effective date of cancellation, if we cancel for any other reason.
- c. We will mail or deliver our notice to your mailing address shown in the Declarations.
- d. The notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
- e. Refund of any premium due will be made as soon as practicable after the date of cancellation. You will be charged premium only for the days you were covered during the policy period. The cancellation will be effective even if we have not made or offered a refund.
- f. Proof of mailing will be sufficient proof of notice.

### 2. CHANGES

This policy and the Declarations include all the agreements between you and us relating to this insurance. No change or waiver may be effected in this policy except by endorsement issued by us.

If a premium adjustment is necessary, we will make the adjustment as of the effective date of the change.

### 3. EXAMINATION OF YOUR BOOKS AND RECORDS

We may examine and audit your books and records as they relate to this policy at any time during the policy period and up to three years afterward.

### 4. INSPECTIONS AND SURVEYS

We have the right, but are not obligated to:

- a. make inspections and surveys at any time;
- b. give you reports on the conditions we find based upon a. above; and
- c. make recommendations for changes based upon a. above.

Such inspections, surveys, reports or recommendations relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. We do not warrant that conditions:

- a. are safe or healthful; or
- b. comply with laws, regulations, codes or standards.

This condition applies not only to us, but also to any rating, advisory, rate service or similar organization which makes these insurance inspections, surveys, reports or recommendations for us.

### 5. PREMIUMS

The first Named Insured shown in the Declarations:

- a. is responsible for the payment of all premiums; and
- b. will be the payee for any return premiums we pay.

**6. TRANSFER OF YOUR RIGHTS AND DUTIES  
UNDER THIS POLICY**

Interest in this policy may not be transferred without our written consent. But if you die, the policy will cover:

- a. your legal representative while acting in that capacity; and
- b. any person having proper custody of insured property until a legal representative is appointed.

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**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **CONDITIONAL EXCLUSION OF TERRORISM INVOLVING NUCLEAR, BIOLOGICAL OR CHEMICAL TERRORISM (RELATING TO DISPOSITION OF FEDERAL TERRORISM RISK INSURANCE ACT)**

This endorsement modifies insurance provided under the following:

COMMERCIAL INLAND MARINE COVERAGE PART

### **A. Applicability Of This Endorsement**

- 1. The provisions of this endorsement will apply if and when one of the following situations occurs:**
  - a. The federal Terrorism Risk Insurance Program ("Program"), established by the Terrorism Risk Insurance Act of 2002 (including ensuing Congressional actions pursuant to the Act), terminates; or**
  - b. The Program is renewed, extended or otherwise continued in effect:**
    - (1) With revisions that increase insurers' statutory percentage deductible or decrease the federal government's statutory percentage share in potential terrorism losses above such deductible, or that results in a change in the level or terms or conditions of coverage; and**
    - (2) We are not required by the Program to make terrorism coverage available to you and elect not to do so.**
- 2. When this endorsement becomes applicable in accordance with the terms of A.1.a. or A.1.b., above, it supersedes any terrorism endorsement already endorsed to this policy that addresses "certified acts of terrorism".**

- 3. If this endorsement does NOT become applicable, then any terrorism endorsement already endorsed to this policy, that addresses "certified acts of terrorism", will remain in effect. However, if the Program is renewed, extended or otherwise continued in effect with revisions that change the level or terms or conditions of coverage, and we are required to offer you the revised coverage or to provide the revised coverage to those who previously accepted coverage under the Program, then we will take the appropriate steps in response to the federal requirements.**
- B. The following definition is added and applies under this endorsement wherever the term terrorism is enclosed in quotation marks. "Terrorism" means activities against persons, organizations or property of any nature:**
  - 1. That involve the following or preparation for the following:**
    - a. Use or threat of force or violence; or**
    - b. Commission or threat of a dangerous act; or**
    - c. Commission or threat of an act that interferes with or disrupts an electronic, communication, information, or mechanical system; and**
  - 2. When one or both of the following applies:**

- a. The effect is to intimidate or coerce a government or the civilian population or any segments thereof, or to disrupt any segment of the economy; or
- b. It appears that the intent is to intimidate or coerce a government or the civilian population, or to further political, ideological, religious, social or economic objectives or to express (or express opposition to) a philosophy or ideology.

C. The following exclusion is added:

**Exclusion Of "Terrorism"**

We will not pay for loss or damage caused directly or indirectly by "terrorism", including action in hindering or defending against an actual or expected incident of "terrorism". Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss. This exclusion applies only when one or more of the following are attributed to an incident of "terrorism":

- 1. The "terrorism" is carried out by means of the dispersal or application of radioactive material, or through the use of a nuclear weapon or device that involves or produces a nuclear reaction, nuclear radiation or radioactive contamination;
- 2. Radioactive material is released, and it appears that one purpose of the "terrorism" was to release such material;
- 3. The "terrorism" is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or
- 4. Pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the "terrorism" was to release such materials.

Multiple incidents of "terrorism" which occur within a 72-hour period and appear to be carried out in concert or to have a related purpose or common leadership will be deemed to be one incident, regardless of whether this endorsement was in effect during the entirety of that time period or not.

**COINSURANCE CONTRACT****BUILDERS' RISK COVERAGE  
REHABILITATION AND RENOVATION FORM****AGREEMENT**

In return for your payment of the required premium, we provide the coverage described herein subject to all the "terms" of the Builders' Risk Coverage Rehabilitation and Renovation Form. This coverage is also subject to the Declarations, Commercial Inland Marine Conditions and additional policy conditions relating to cancellation, changes or modifications and inspections.

Endorsements and schedules may also apply. They are shown in the Declarations.

Refer to the Definitions section for additional words and phrases that have special meaning. These words and phrases are shown in quotation marks.

The descriptions in the headings of this coverage form and all applicable endorsements are solely for convenience and form no part of the "terms" of coverage.

**PROPERTY COVERED**

We cover the following property unless the property is excluded or subject to limitations.

1. **Coverage** We cover direct physical loss or damage caused by a covered peril to "building materials" and "existing buildings" that are part of your "rehabilitation or renovation project".
2. **Coverage Limitations**
  - a. We only cover "existing buildings" when a "limit" is shown in the Declarations for Existing Buildings.
  - b. We only cover "building materials" that:
    - (1) Will become; or
    - (2) Since the inception date of this policy, have become a permanent part of the rehabilitation or renovation of an "existing building" or an extension of or addition to an "existing building".
  - c. We only cover "existing buildings" and "building materials" at the "jobsite" shown in the Declarations.
3. **Vacant Building Limitation** We only cover a vacant "existing building" for 60 consecutive days from the inception date of this policy unless:
  - a. Building permits have been obtained; and
  - b. Rehabilitation or renovation work has begun on the "existing building".

This limitation is waived only when a date is shown in the Declarations under Vacant Building Limitation Waived.
4. **We Do Not Pay**
  - a. **Penalties** We do not pay for any penalties for:

- (1) Non-completion or late completion of a "rehabilitation or renovation project" in accordance with the provisions or conditions in the construction contract; or
  - (2) Non-compliance with any provisions or conditions in the construction contract.
- b. **Diminution In Value** We do not pay for any loss of value or any diminution in value of a "rehabilitation or renovation project", however measured, that remains following the repair or replacement of a covered loss.

**PROPERTY NOT COVERED**

1. **Contraband** We do not cover contraband or property in the course of illegal transportation or trade.
2. **Excavations, Grading, Filling, Pipes, Flues And Drains** We do not cover:
  - a. The cost of excavations, grading or filling; and
  - b. Underground pipes; flues; and drains.
3. **Land** We do not cover land including land on which covered property is located.
4. **Not A Permanent Part Of Building** We do not cover:
  - a. Materials and supplies;
  - b. Machinery, tools and equipment; and
  - c. Business personal property that will not become a permanent part of a covered "existing building".
5. **Roadways And Walkways** We do not cover any portion of walkways, roadways and other paved surfaces that is more than 1,000 feet from a covered "existing building".

6. **Standing Building Or Structure** Except for a covered "existing building", we do not cover any:
  - a. Standing building or standing structure; or
  - b. Part of a standing building or standing structure that has been wholly or partially constructed, erected or fabricated prior to the inception of this policy.
7. **Trees, Shrubs And Plants** We do not cover trees, shrubs, plants or lawns.
8. **Waterborne Property** We do not cover property while waterborne except while in transit in the custody of a carrier for hire.

## COVERAGE EXTENSIONS

### Provisions That Apply To Coverage Extensions

The following Coverage Extensions indicate an applicable "limit". This "limit" may also be shown in the Declarations.

If a different "limit" is shown in the Declarations, that "limit" will apply instead of the "limit" shown below.

However, if no "limit" is indicated for a Coverage Extension within this coverage form, coverage is provided up to the full "limit" for the applicable covered property unless a different "limit" is shown in the Declarations.

Unless otherwise indicated, the coverages provided below are part of and not in addition to the applicable "limit" for coverage described under Property Covered.

The "limit" provided under a Coverage Extension cannot be combined or added to the "limit" for any other Coverage Extension or Supplemental Coverage, including a Coverage Extension, Supplemental Coverage or other coverage that is added to this policy by endorsement. If coinsurance provisions are part of this policy, the following Coverage Extensions are not subject to and not considered in applying coinsurance conditions.

#### 1. Debris Removal

- a. **Coverage** We pay the cost of debris removal. Debris removal means the costs for the demolition, clearing and removal of debris of covered property if such debris results from a covered peril.
- b. **We Do Not Cover** This coverage does not include costs to:
  - (1) Extract "pollutants" from land or water; or
  - (2) Remove, restore or replace polluted land or water.
- c. **Limit** We do not pay any more under this coverage than 25% of the amount we pay for the direct physical loss or damage exclusive of the costs for debris removal. We will not pay more for loss to property and debris removal combined than the "limit" for the damaged property.
- d. **Additional Limit** We pay up to an additional \$10,000 for debris removal expense when the debris removal expense exceeds 25% of the amount we pay for direct physical loss or when

the loss to property and debris removal combined exceeds the "limit" for the damaged property.

- e. **You Must Report Your Expenses** We do not pay any expenses unless they are reported to us in writing within 180 days from the date of direct physical loss to covered property.

#### 2. Limited Fungi Coverage

- a. **Coverage** We pay for:
  - (1) Costs and expenses arising out of the presence of "fungi" on covered property caused by or resulting from a covered peril; and
  - (2) Direct physical loss or damage to covered property caused by or relating to the existence of or any activity of "fungi".

- b. **Coverage Limitation** We only provide the coverage described in item 2.a. above:
  - (1) When the "fungi" is the result of a:
    - (a) "Specified peril" other than fire or lightning; or
    - (b) "Flood" (if the Flood Coverage is provided under this policy);
  - (2) If all reasonable steps were taken to protect the property from additional damage at and after the time of the occurrence.

- c. **Limited Fungi Coverage Limit** The most we pay for all loss or damage covered by this Coverage Extension at all "rehabilitation and renovation projects" is \$15,000, unless another "limit" is shown in the Declarations.

The Limited Fungi Coverage Limit applies regardless of the number of claims made.

The Limited Fungi Coverage Limit applies regardless of the number of locations or "rehabilitation and renovation projects" insured under this policy.

The Limited Fungi Coverage Limit is the most that we pay for the total of all loss or damage arising out of all occurrences of "specified perils", other than fire or lightning, or "flood" (if applicable) during each separate 12-month period beginning with the inception date of this policy.

- d. **If The Policy Term Is Extended** If the policy term is extended for an additional term of less than 12 months, this additional term will be considered part of the preceding term for the purpose of determining the Limited Fungi Coverage Limit.

- e. **Recurrence And Continuation Of Fungi**

The Limited Fungi Coverage Limit is the most that we pay with respect to a specific occurrence of a loss which results in "fungi" even if such "fungi" recurs or continues to exist during this or any future policy term.



**f. Limit Applies To Other Costs Or Expenses**

The Limited Fungi Coverage Limit also applies to any cost or expense to:

- (1) Clean up, contain, treat, detoxify or neutralize "fungi" on covered property or remove "fungi" from covered property;
- (2) Remove and replace those parts of covered property necessary to gain access to "fungi"; and
- (3) Test for the existence or level of "fungi" following the repair, replacement, restoration or removal of damaged property if it is reasonable to believe that "fungi" is present.

**g. Loss Not Caused By "Fungi"**

If there is a covered loss or damage to covered property not caused by "fungi", loss payment will not be limited by the "terms" of this Coverage Extension. However, to the extent that "fungi" causes an increase in the loss, that increase is subject to the "terms" of this Coverage Extension.

**SUPPLEMENTAL COVERAGES****Provisions That Apply To Supplemental Coverages**

The following Supplemental Coverages indicate an applicable "limit". This "limit" may also be shown in the Declarations.

If a different "limit" is shown in the Declarations, that "limit" will apply instead of the "limit" shown below.

However, if no "limit" is indicated for a Supplemental Coverage within this coverage form, coverage is provided up to the full "limit" for the applicable covered property unless a different "limit" is shown in the Declarations.

Unless otherwise indicated, a "limit" for a Supplemental Coverage provided below is separate from, and not part of, the applicable "limit" for coverage described under Property Covered.

The "limit" available for coverage described under a Supplemental Coverage is:

- a. The only "limit" available for the described coverage; and
- b. Is not the sum of the "limit" indicated for a Supplemental Coverage and the "limit" for coverage described under Property Covered.

The "limit" provided under a Supplemental Coverage cannot be combined or added to the "limit" for any other Supplemental Coverage or Coverage Extension, including a Supplemental Coverage, Coverage Extension or other coverage that is added to this policy by endorsement.

If coinsurance provisions are part of this policy, the following Supplemental Coverages are not subject to and not considered in applying coinsurance conditions.

**1. Expediting Expenses**

- a. **Coverage** When a covered peril occurs to a "rehabilitation or renovation project", we pay for

reasonable expediting expenses necessary to complete construction within the time frame specified in the construction contract.

**b. Expediting Expenses Include**

Expediting expenses include, but are not limited to, additional:

- (1) Labor or overtime;
- (2) Transportation costs and storage expense;
- (3) Expense to rent additional equipment; and
- (4) Similar construction expenses.

- c. **Limit** The most we pay in any one occurrence for all expediting expenses is \$10,000.

**2. Pollutant Cleanup And Removal**

- a. **Coverage** We pay your expense to extract "pollutants" from land or water if the discharge, dispersal, seepage, migration, release or escape of the "pollutants" is caused by a covered peril that occurs during the policy period.

- b. **Time Limitation** The expenses to extract "pollutants" are paid only if they are reported to us in writing within 180 days from the date the covered peril occurs.

- c. **We Do Not Cover** We do not pay the cost of testing, evaluating, observing or recording the existence, level or effects of "pollutants". However, we pay the cost of testing which is necessary for the extraction of "pollutants" from land or water.

- d. **Limit** The most we pay for each location is \$10,000 for the sum of all such expenses arising out of a covered peril occurring during each separate 12-month period of this policy.

**3. Temporary Storage Locations**

- a. **Coverage** We cover direct physical loss or damage caused by a covered peril to covered "building materials" while temporarily in storage at a location that is not described in the Declarations.

- b. **We Do Not Cover** We do not cover "building materials" in storage if the property has not been specifically allocated to or otherwise identified with a "jobsite" described in the Declarations.

- c. **Limit** The most we pay in any one occurrence for loss to property at a storage location is \$10,000.

**4. Transit**

- a. **Coverage** We cover direct physical loss or damage caused by a covered peril to covered "building materials" while in transit.

- b. **Limit** The most we pay in any one occurrence for loss to property in transit is \$10,000.

**PERILS COVERED**

We cover risks of direct physical loss or damage unless the loss is limited or caused by a peril that is excluded.



**PERILS EXCLUDED**

1. We do not pay for loss or damage caused directly or indirectly by, or consisting of, one or more of the following excluded causes, events or conditions. Such loss or damage is excluded regardless of other causes, events or conditions that contribute to or aggravate the loss, whether such causes, events or conditions act to produce the loss before, at the same time as, or after the excluded causes, events or conditions.

a. **Civil Authority** Order of any civil authority, including seizure, confiscation, destruction or quarantine of property.

We do cover loss resulting from acts of destruction by the civil authority to prevent the spread of fire, unless the fire is caused by a peril excluded under this coverage.

b. **Earth Movement** Any "earth movement", whether natural or manmade and regardless of cause and regardless of whether or not the cause of "earth movement":

- (1) Originated at the covered property; or
- (2) Was being performed at your request or for your benefit.

However, if eruption, explosion or effusion of a volcano results in "volcanic action", we will pay for the loss or damage caused by that "volcanic action".

If "earth movement" results in fire, we will pay for the loss or damage caused by that fire. If "earth movement" (other than eruption, explosion or effusion of a volcano) results in explosion, we will pay for the loss or damage caused by that explosion.

This exclusion does not apply to covered property while in transit.

c. **Flood** "Flood".

Regardless of the cause, we also do not cover waterborne material carried or otherwise moved by "flood", whether or not driven by wind, including storm surge, or material carried or otherwise moved by mudslide or mudflow.

However, if "flood" results in fire, explosion or sprinkler leakage, we will pay for the loss or damage caused by that fire, explosion or sprinkler leakage.

This exclusion does not apply to covered property while in transit.

d. **"Fungi"** Except as provided under Coverage Extensions - Limited Fungi Coverage, the existence of or any activity of "fungi". However, if "fungi" results in a "specified peril", we cover loss or damage caused by that "specified peril".

This exclusion does not apply to:

- (1) Loss that results from fire or lightning; or
- (2) Collapse caused by hidden decay.

e. **Nuclear Hazard** Nuclear reaction, nuclear radiation or radioactive contamination (whether controlled or uncontrolled; whether caused by natural, accidental or artificial means). Loss caused by nuclear hazard is not considered loss caused by fire, explosion or smoke. Direct loss by fire resulting from the nuclear hazard is covered.

f. **Ordinance Or Law** Enforcement of any code, ordinance or law regulating the use, construction or repair of any building or structure; or requiring the demolition of any building or structure including the cost of removing its debris.

We do not pay for loss or increased cost regardless if the loss or increased cost is caused by or results from the:

- (1) Enforcement of any code, ordinance or law even if a building or structure has not been damaged; or
- (2) Increased costs that you incur because of your compliance with a code, ordinance or law during the construction, repair, rehabilitation, remodeling or razing of a building or structure, including the removal of debris, following direct physical loss or damage to the property.

g. **Sewer, Septic Tank, Sump Or Drain Backup And Water Below The Surface**

- (1) Water or waterborne material that backs up, overflows or is otherwise discharged through a sewer or drain, sump or septic tank, eaves trough or downspout; or
- (2) Water or waterborne material below the surface of the ground, whether naturally or artificially occurring, including but not limited to water or waterborne material that exerts pressure on or flows, seeps or leaks through or into a covered building or structure, sidewalk, driveway, foundation, swimming pool or other structure.

However, if sewer, drain, sump, septic tank, eaves trough or downspout backup and water or waterborne material below the surface results in fire, explosion or sprinkler leakage, we cover the loss or damage caused by that fire, explosion or sprinkler leakage.

This exclusion does not apply to covered property while in transit.

h. **War And Military Action**

- (1) War, including undeclared war or civil war;
- (2) A warlike action by a military force, including action taken to prevent or defend against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution or unlawful seizure of power including action taken

by governmental authority to prevent or defend against any of these.

With regard to any action that comes within the "terms" of this exclusion and involves nuclear reaction, nuclear radiation or radioactive contamination, this War And Military Action exclusion will apply in place of the Nuclear Hazard exclusion.

2. We do not pay for loss or damage that is caused by or results from one or more of the following:

**a. Collapse** We do not pay for loss or damage caused by or resulting from collapse, except as provided under Other Coverages - Collapse. However, if collapse results in a covered peril, we cover the loss or damage caused by that covered peril.

This exclusion does not apply to covered property while in transit.

**b. Contamination Or Deterioration** We do not pay for loss or damage caused by or resulting from contamination or deterioration including corrosion, decay, rust or any quality, fault or weakness in covered property that causes it to damage or destroy itself.

**c. Criminal, Fraudulent, Dishonest Or Illegal Acts** We do not pay for loss or damage caused by or resulting from criminal, fraudulent, dishonest or illegal acts committed alone or in collusion with another by:

- (1) You;
- (2) Others who have an interest in the property;
- (3) Others to whom you entrust the property;
- (4) Your partners, officers, directors, trustees, joint venturers, or your members or managers if you are a limited liability company; or
- (5) The employees or agents of (1), (2), (3) or (4) above, whether or not they are at work.

This exclusion does not apply to acts of destruction by your employees, however, we do not pay for theft by employees.

This exclusion does not apply to covered property in the custody of a carrier for hire.

**d. Defects, Errors And Omissions In Design Or Planning**

- (1) We do not pay for loss or damage caused by or resulting from an act, defect, error or omission (negligent or not) relating to:

- (a) Design including specifications; or
- (b) Planning including zoning, development, siting, surveying, grading or compaction.

However, if an act, defect, error or omission as described above results in a "specified peril", we do cover the loss or damage caused by that "specified peril".

- (2) This exclusion applies regardless of whether or not the act, defect, error or omission:

- (a) Originated at a covered "rehabilitation or renovation project; or
- (b) Was being performed at your request or for your benefit.

**e. Delay In Completion And Increased Construction Costs**

- (1) We do not pay for loss or damage caused directly or indirectly by a:

- (a) Delay in the completion of construction, rehabilitation or renovation of your "rehabilitation or renovation project" or any portion of your "rehabilitation or renovation project"; or
- (b) A change in the sequence of construction, rehabilitation or renovation of your "rehabilitation or renovation project" or any portion of your "rehabilitation or renovation project"

regardless of the cause of the delay in completion or change in sequence.

- (2) We also do not pay for increased construction costs caused by or resulting from a delay in completion or change in sequence as described above under items e.(1). Increased construction costs include, but are not limited to:

- (a) General conditions;
- (b) Increased construction costs and additional construction expenses;
- (c) Increased overhead, increased material costs and increased labor costs;
- (d) Soft costs; and
- (e) Loss of earnings and loss of rental income.

- (3) General conditions means general conditions and extended general conditions including, but not limited to, costs of additional:

- (a) Utility charges;
- (b) Maintenance;
- (c) Facilities;
- (d) Communications; and
- (e) Administrative personnel.

**f. Electrical Currents** We do not pay for loss or damage caused by or resulting from arcing or by electrical currents other than lightning.

However, if arcing or electrical currents other than lightning result in a "specified peril", we do cover the loss or damage caused by that "specified peril".

**g. Freezing** We do not pay for loss or damage caused by or resulting from water; other liquids; powder; or molten material that leaks or flows from plumbing, heating, air conditioning systems or appliances other than fire protective systems caused by freezing.



This exclusion does not apply if you use reasonable care to maintain heat in the building or structure; or you drain the equipment and turn off the supply if the heat is not maintained.

- h. **Loss Of Use And Consequential Loss** We do not pay for loss or damage caused by or resulting from loss of use, delay or loss of market. We also do not pay for any consequential loss or damage of any nature.
- i. **Materials And Workmanship** We do not pay for loss or damage caused by or resulting from faulty, inadequate or defective materials or workmanship. However, if loss by a covered peril results, we pay for the resulting loss.
- j. **Mechanical Breakdown** We do not pay for loss or damage caused by or resulting from:
  - (1) Mechanical breakdown; or
  - (2) Rupturing or bursting of moving parts of machinery caused by centrifugal force.
 However, if a mechanical breakdown or rupturing or bursting of moving parts of machinery caused by centrifugal force results in a "specified peril", we do cover the loss or damage caused by that "specified peril".
- k. **Missing Property** We do not pay for missing property where the only proof of loss is unexplained or mysterious disappearance of covered property, shortage of property discovered on taking inventory or any other instance where there is no physical evidence to show what happened to the covered property. This exclusion does not apply to covered property in the custody of a carrier for hire.
- l. **Pollutants** We do not pay for loss or damage caused by or resulting from release, discharge, seepage, migration, dispersal or escape of "pollutants":
  - (1) Unless the release, discharge, seepage, migration, dispersal or escape is caused by a "specified peril"; or
  - (2) Except as specifically provided under the Supplemental Coverages - Pollutant Clean-up And Removal.
 We do cover any resulting loss caused by a "specified peril".
- m. **Rain, Snow, Ice Or Sleet** We do not pay for loss or damage caused by or resulting from rain, snow, ice or sleet to property in the open that is not part of the permanent "existing building". This exclusion does not apply to property in the custody of carriers for hire.
- n. **Settling, Cracking, Shrinking, Bulging Or Expanding** We do not pay for loss or damage caused by or resulting from settling, cracking, shrinking, bulging or expanding of pavements,

foundations, walls, ceilings, glass or roofs.

However, if settling, cracking, shrinking, bulging or expanding as described above results in a covered peril, we do cover the loss or damage caused by that covered peril.

- o. **Steam Boiler Explosion** We do not pay for loss or damage caused by or resulting from an explosion of steam boilers, steam pipes, steam turbines or steam engines. However, if an explosion of steam boilers, steam pipes, steam turbines or steam engines results in a fire or combustion explosion, we cover the loss or damage caused by that fire or combustion explosion. We also cover loss or damage caused by or resulting from the explosion of gas or fuel in a firebox, combustion chamber or flue.
- p. **Temperature/Humidity** We do not pay for loss or damage caused by or resulting from dryness, dampness, humidity or changes in or extremes of temperature.
- q. **Voluntary Parting** We do not pay for loss or damage caused by or resulting from voluntary parting with title to or possession of any property because of any fraudulent scheme, trick or false pretense.
- r. **Wear And Tear** We do not pay for loss or damage caused by or resulting from wear and tear, marring or scratching.

#### OTHER COVERAGES

##### Collapse

- 1. **Coverage** We pay for loss caused by direct physical loss or damage involving collapse of "existing buildings" while in the course of rehabilitation or renovation including:
  - a. Any part of "existing buildings"; or
  - b. "Building materials" inside of "existing buildings".
- 2. **Covered Perils** We only cover collapse of "existing buildings" while in the course of rehabilitation or renovation if the collapse is caused by one or more of the following perils:
  - a. "Specified perils" only as insured against in this coverage form;
  - b. Hidden decay, unless you know of the presence of the decay prior to the collapse;
  - c. Hidden insect or vermin damage, unless you know of the damage prior to the collapse;
  - d. Weight of people or personal property;
  - e. Weight of rain that collects on a roof; or
  - f. Use of defective materials.
- 3. **Collapse Means** Collapse means a sudden and unexpected falling in or caving in of an "existing building", including any portion of an "existing building", while in the course of rehabilitation or renovation with the result that rehabilitation or renovation cannot be completed as intended.

4. **Collapse Does Not Mean** The following are not considered to be in a state of collapse:
- A structure or building that is standing or any portion of a structure or building that is standing even if it displays evidence of bending, bulging, cracking, expansion, leaning, sagging, settling or shrinkage;
  - A structure or building or any portion of a structure or building in danger of falling in or caving; and
  - A portion of a structure or building that is standing even if it has separated from another portion of the structure or building.
5. **Limited Fungi Coverage Does Not Increase/Decrease Coverage** The "terms" under Coverage Extension - Limited "Fungi" Coverage do not increase or decrease the coverage for Collapse.

## VALUATION

Under Commercial Inland Marine Conditions, Special Conditions, Valuation is deleted as it applies to Builders' Risk Coverage, Rehabilitation and Renovation Form.

### 1. Existing Building

- Stated Value** If Stated Value is shown in the Declarations for Existing Building, the value of an "existing building" that sustains direct physical loss or damage will be based on the "limit" shown for Existing Building in the Declarations.
- Actual Cash Value** If Actual Cash Value is shown in the Declarations for Existing Building, the value of the part of an "existing building" that sustains direct physical loss or damage will be based on the actual cash value at the time of loss (with a deduction for depreciation).

### 2. Building Materials

- Actual Cash Value** If Actual Cash Value is shown in the Declarations under Rehabilitation And Renovation for "building materials", the value of "building materials" will be based on the actual cash value at the time of loss (with a deduction for depreciation).  
The actual cash value of "building materials" means:
  - The necessary and reasonable costs of materials and labor incurred to repair or replace, with a deduction for depreciation, the part of the covered "building materials" that sustains direct physical loss or damage;
  - The reasonable overhead and profit related to the covered "building materials" that sustains direct physical loss or damage but not to exceed the overhead and profit being charged for the "rehabilitation or renovation project" in accordance with the construction contracts; and
  - Other related construction costs and expenses that are re-incurred to repair or re-

place the part of "building materials" that sustain direct physical loss or damage but only if such costs have been included as part of the "limit" for a covered "rehabilitation or renovation project".

- Replacement Cost** If Replacement Cost is shown in the Declarations under Rehabilitation And Renovation for "building materials", the value of "building materials" will be based on replacement cost.  
Replacement cost of "building materials" means:
  - The necessary and reasonable costs of materials and labor incurred to repair or replace, without deduction for depreciation, the part of the covered property that sustains direct physical loss or damage;
  - The reasonable overhead and profit related to the covered property that sustains direct physical loss or damage but not to exceed the overhead and profit being charged for the "rehabilitation or renovation project" in accordance with the construction contracts; and
  - Other related construction costs and expenses that are re-incurred to repair or replace the part of the covered property that sustains direct physical loss or damage but only if such costs have been included as part of the "limit" for a covered "rehabilitation or renovation project".

Replacement cost is limited to the cost of repair or replacement with similar materials on the same site and used for the same purpose. If the part of the covered property that sustains direct physical loss or damage is repaired or replaced, the payment will not exceed the amount you spend to repair or replace the damaged or destroyed property.

## HOW MUCH WE PAY

- Loss Settlement Terms** Subject to paragraphs 2. and 3. under How Much We Pay and the Special Conditions, Insurable Interest, Deductible, When Two or More Coverage Apply and Other Insurance under Commercial Inland Marine Conditions, we pay the lesser of:
  - The amount determined under Valuation herein;
  - The cost to repair, replace or rebuild the property with material of like kind and quality to the extent practicable; or
  - The "limit" that applies to the covered property.
- Limits**
  - Building Materials Limit** The most we pay in any one occurrence for loss to "building materials" is the Building Materials Limit shown in the Declarations.
  - Existing Building Limit** The most we pay in any one occurrence for loss to an "existing



building" is the Existing Building Limit shown in the Declarations.

- c. **Catastrophe Limit** The most we pay in any one occurrence is the Catastrophe Limit, regardless if an occurrence or loss involves:

- (1) "Building materials" and "existing building"; or
- (2) One or more described "jobsites"; or
- (3) Any combination of "building materials", "existing building", described "jobsites" or coverages described under Coverage Extensions or Supplemental Coverages.

### 3. Coinsurance Clause

- a. **When Coinsurance Applies** We only pay a part of the loss if the "limit" is less than the co-insurance percentage of the estimated value of "building materials" and "existing building" at the completion of the "rehabilitation or renovation project". The applicable coinsurance percentage is shown in the Declarations.

- b. **How We Determine Our Part Of The Loss** Our part of the loss is determined using the following steps:

- (1) Multiply the coinsurance percentage shown in the Declarations by the value of "building materials" and "existing building" at the completion of the "rehabilitation or renovation project" had no loss occurred;
- (2) Divide the "limit" for "building materials" and "existing building" by the result determined in b.(1) above;
- (3) Multiply the total amount of loss, after the application of any deductible, by the result determined in b.(2) above.

The most we pay is the amount determined in b.(3) above or the Building Materials Limit, whichever is less. We do not pay any remaining part of the loss.

- c. **If There Is More Than One Limit** If there is more than one Building Materials or Existing Building Limit shown in the Declarations for this coverage part, this procedure applies separately to each "limit".
- d. **If There Is Only One Limit** If there is only one "limit" shown in the Declarations for this coverage, this procedure applies to the total of all "building materials" or Existing Building to which the "limit" applies.

### LOSS PAYMENT

#### Loss Payment Options

1. **Our Options** In the event of loss covered by this coverage form, we have the following options:
  - a. Pay the value of the lost or damaged property;
  - b. Pay the cost of repairing or replacing the lost or damaged property;

- c. Rebuild, repair or replace the property with other property of equivalent kind and quality, to the extent practicable, within a reasonable time; or
- d. Take all or part of the property at the agreed or appraised value.

### 2. Notice Of Our Intent To Rebuild, Repair Or Replace

- We must give you notice of our intent to rebuild, repair or replace within 30 days after receipt of a duly executed proof of loss.

### ADDITIONAL CONDITION

1. **Territorial Limits** We cover property while in the United States of America and Canada.
2. **Carriers For Hire** You may accept bills of lading or shipping receipts issued by carriers for hire that limit their liability to less than the replacement cost or actual cash value of the covered property.

### ADDITIONAL COVERAGE LIMITATIONS

1. **Occupancy And Use** We do not provide coverage under this policy if, without our prior written consent, an "existing building" is:
  - a. Occupied in whole or in part; or
  - b. Put to its intended use.
 However, this provision does not apply if Permission To Occupy is shown in the Declarations.
2. **When Coverage Ceases** - Coverage will end when one of the following first occurs:
  - a. This policy expires or is canceled;
  - b. A covered "rehabilitation or renovation project" is accepted by the purchaser;
  - c. Your insurable interest in the covered property ceases;
  - d. You abandon construction, rehabilitation or renovation with no intent to complete it; or
  - e. A covered "rehabilitation or renovation project" has been completed for more than 90 days.

### DEFINITIONS

1. "Building materials" means materials, supplies, attachments and fixtures that:
  - a. Will become; or
  - b. Since the inception date of this policy, have become a permanent part of the rehabilitation or renovation of an "existing building" or an extension of or addition to an "existing building".
2. "Earth movement" means:
  - a. The movement of the ground, soil, sediments, substrates or strata whether the movement is caused by an act of nature or is manmade, including but not limited to:
    - (1) Earthquake including aftershocks, liquefaction or ground displacement associated with earthquake;
    - (2) Eruption, explosion or effusion of a volcano;

- (3) Shaking or ground rupture before, during or after volcanic eruption;
  - (4) Landslide;
  - (5) Mine subsidence whether or not the manmade mine is currently in use; or
  - (6) Any other ground movement, including sinking (other than "sinkhole collapse"), shifting, contraction or rising of the ground including, but not limited to:
    - (a) Erosion, expansion shrinking;
    - (b) Freezing or thawing;
    - (c) Soil compaction; and
    - (d) Movement caused by water under the surface of the ground that cause cracking, settling, tilting, leaning or shifting of covered property.
  - b. The movement of the ground, soil, sediments, substrates or strata resulting from any act, error or omission including but not limited to:
    - (1) Construction or excavation activities, regardless of whether or not occurring under covered property and regardless of whether the construction or excavation was being performed at your request or for your benefit;
    - (2) Blasting or vibration from any source;
    - (3) Any process for removing gas; oil; minerals; water; steam; or any other natural resource, substance or material from below the surface of the ground including, but not limited to, hydraulic fracturing (fracking), mining, drilling or geothermal energy extraction;
    - (4) Water injection below the surface of the ground, whether wastewater from hydraulic fracturing or any other source or water injected into underground rock for the purpose of creating geothermal energy; or
    - (5) Carbon sequestration, biosequestration or any other process for removing carbon dioxide or other forms of carbon from the atmosphere and placed it in an underground reservoir, underground geologic formations or any other underground storage technique.
3. "Existing building" means a structure or building constructed and standing prior to the inception of this policy and that will undergo renovation or rehabilitation as part of your "rehabilitation or renovation project".
- An "existing building" includes only those parts of a standing structure or a standing building that are intended to become a permanent part of the structure or building during and after renovation or rehabilitation.
- An "existing building" includes foundations, attachments, permanent fencing and other permanent fixtures.
4. "Flood" means, regardless of the cause, an overflowing or inundation by water of an area that was previously and normally dry or not covered by water, whether caused artificially or naturally, by human or animal forces or by an act of nature. Regardless of the cause, "flood" includes, but is not limited to:
    - a. Overflow of inland or tidal waters, waves, tidal waves or tsunamis, or spray that results from any of these, all whether driven by wind or not, including but not limited to storm surge;
    - b. Unusual and rapid accumulation or runoff of surface waters from any source; or
    - c. Mudslides or mudflows if caused by:
      - (1) Unusual and rapid accumulation or runoff of surface waters or waves; or
      - (2) Currents of water exceeding anticipated cyclical levels.
  5. "Fungi" means any type or form of fungus, including, but not limited to mold, mildew, mycotoxins, spores, scents or byproducts produced or released by any type or form of fungus.
  6. "Jobsite" means any location, project or work site where you are in the process of renovating or rehabilitating a building or structure.
  7. "Limit" means the amount of coverage that applies.
  8. "Pollutant" means:
    - a. Any solid, liquid, gaseous, thermal or radioactive irritant or contaminant, including acids, alkalis, chemicals, fumes, smoke, soot, vapor and waste. Waste includes materials to be recycled, reclaimed or reconditioned, as well as disposed of; and
    - b. Electrical or magnetic emissions, whether visible or invisible, and sound emissions.
  9. "Rehabilitation or renovation project" means a project, described in the Declarations, involving the construction, rehabilitation or renovation of a structure or building.
  10. "Sinkhole collapse" means the sudden settlement or collapse of earth supporting the covered property into subterranean voids created by the action of water on a limestone or similar rock formation. It does not include the value of the land or the cost of filling sinkholes.
  11. "Specified perils" means aircraft; civil commotion; explosion; falling objects; fire; hail; leakage from fire extinguishing equipment; lightning; riot; "sinkhole collapse"; smoke; sonic boom; vandalism; vehicles; "volcanic action"; water damage; weight of ice, snow or sleet; and windstorm.
- Falling objects does not include loss to:
- a. Personal property in the open; or
  - b. The interior of buildings or structures or to personal property inside buildings or structures unless the exterior of the roofs or walls are first damaged by a falling object.

Water damage means the sudden or accidental discharge or leakage of water or steam as a direct result of breaking or cracking of a part of the system or appliance containing the water or steam.

- 12.** "Terms" means all provisions, limitations, exclusions, conditions and definitions that apply.

- 13.** "Volcanic action" means airborne volcanic blast or airborne shock waves; ash, dust or particulate matter; or lava flow.

"Volcanic action" does not include the cost to remove ash, dust or particulate matter that does not cause direct physical loss to the covered property.

**CAP ON LOSSES FROM CERTIFIED ACTS OF TERRORISM  
AND  
IMPORTANT INFORMATION REGARDING TERRORISM RISK  
INSURANCE COVERAGE**

It is agreed:

1. With respect to any one or more certified acts of terrorism, we will not pay any amounts for which we are not responsible because of the application of any provision which results in a cap on our liability for payments for terrorism losses in accordance with the terms of the federal Terrorism Risk Insurance Act of 2002 (including ensuing Congressional actions pursuant to the Act).
2. Certified act of terrorism means any act certified by the Secretary of the Treasury, in consultation with:
  - a. the Secretary of Homeland Security; and
  - b. the Attorney General of the United Statesto be an act of terrorism as defined and in accordance with the federal Terrorism Risk Insurance Act of 2002 (including ensuing Congressional actions pursuant to the Act).
3. Under the federal Terrorism Risk Act of 2002 (including ensuing Congressional actions pursuant to the Act) a terrorist act may be certified:
  - a. if the aggregate covered commercial property and casualty insurance losses resulting from the terrorist act exceed \$5 million; and
  - b. (1) if the act of terrorism is:
    - a) a violent act; or
    - b) an act that is dangerous to human life, property or infrastructure; and(2) if the act is committed:
    - a) by an individual or individuals as part of an effort to coerce the civilian population of the United States; or
    - b) to influence the policy or affect the conduct of the United States government by coercion.

All other policy terms and conditions apply.



## IMPORTANT INFORMATION REGARDING TERRORISM RISK INSURANCE COVERAGE

The Terrorism Risk Insurance Act of 2002 was signed into law on November 26, 2002. The Act (including ensuing Congressional actions pursuant to the Act) defines an act of terrorism, to mean any act that is certified by the Secretary of the Treasury, in consultation with the Secretary of Homeland Security and the Attorney General of the United States to be (i) an act of terrorism; (ii) to be a violent act or an act that is dangerous to human life, property or infrastructure; (iii) to have resulted in damage within the United States or outside the United States in the case of certain air carriers or vessels or the premises of a United States mission; and (iv) to have been committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States government by coercion.

Subject to the policy terms and conditions, this policy provides insurance coverage for acts of terrorism as defined in the Act.

Any coverage for certain commercial lines of property and casualty insurance provided by your policy for losses caused by certified acts of terrorism are partially paid by the federal government under a formula established by federal law. Under this formula, the government will reimburse us for 85% of such covered losses that exceed the statutory deductible paid by us. However, beginning January 1, 2016 the share will decrease 1% per calendar year until it equals 80%. **You should also know that in the event aggregate insured losses exceed \$100 billion during any year the Act is in effect, then the federal government and participating United States insurers that have met their insurer deductible shall not be liable for the payment of any portion of that amount of the loss that exceeds \$100 billion. In the event that aggregate insured losses exceed \$100 billion annually, no additional claims will be paid by the federal government or insurers.** This formula is currently effective through December 31, 2020 unless extended.

The premium charge, if any, for this coverage is shown separately on the attached Declarations page. In the event of a certified act of terrorism, future policies also may include a government assessed terrorism loss risk-spreading premium in accordance with the provisions of the Act.

Please contact us if you would like to reject coverage for certified acts of terrorism.